IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.3007 OF 2005

Bhagyashree Bhalchandra Joshi. ...Petitioner.
Vs.
The Pune Municipal Corporation & Ors. ...Respondents.
....
Mr. Hiralal Thakkar, Sr. Advocate with Mr. M.K. Nesari for the Petitioner.
Mr.V. G. Mujumdar for Respondent No.1 and 2.
Mrs. Jyoti Chavan i/b. Harshad Bhadbhade for Respondent No.3.
.....
CORAM : KSHITIJ R. VYAS, C.J. &
DR.D.Y.CHANDRACHUD, J.

May 2, 2006.

P.C. (Per Dr. D.Y. Chandrachud, J.) :

The Petitioner is the mother and the Third Respondent is the wife of Vivek Bhalchandra Joshi, who expired on 5th October 2002. The deceased was a developer of real estate. A society was formed by slum dwellers residing on a plot of land bearing Survey No.723A, Final Plot No.1004 (part), Town Planning Scheme No.1 at Ranjendra Nagar in the City of Pune. A Slum Rehabilitation Scheme was sanctioned and with the consent of slum dwellers, the First Respondent appointed the deceased as a developer. In pursuance thereof, a development agreement dated

27th December 2000 was entered into. Upon the death of the developer, the First Respondent as the owner of the plot, appointed the Third Respondent instead and in place of the deceased. According to the Third Respondent, the Society of slum dwellers consented to her acting as the new developer. Disputes arose between the Petitioner and the Third Respondent and the case of the Petitioner, on the one hand, is that with a view to exclude her from the estate of the deceased, the Third Respondent got the Municipal Corporation to execute a supplementary agreement incorporating the name of the Third Respondent in the original development agreement. According to the Petitioner, the Third Respondent has obtained an heirship certificate under Bombay Regulation VIII of 1827 on the basis of an incorrect representation that she is the sole heir of the deceased. On the other hand, in the reply filed by the Third Respondent, it has been stated that during the life time of the deceased, the Petitioner and her husband had disowned the deceased; that the Third Respondent was actively looking after the day-to-day business of the proprietary concern together with her

husband; that the development agreement which was entered into originally with the deceased, came to an end upon his death, and that in any event, his legal heirs do not have any right therein. According to the Third Respondent, the Municipal Corporation recognised her instead and in place of her late husband and the Society of slum dwellers gave its consent to appointing her as a developer. The Third Respondent has stated on affidavit that 107 tenements which were constructed for rehabilitating the slum dwellers were handed over free of cost to the First Respondent and another 236 tenements were almost complete as on 13th September 2005 (when the affidavit was filed) and possession was to be handed over to the slum dwellers two months thereafter. 300 more slum dwellers are to be provided with tenements. The Third Respondent has averred that at the time of his death, her husband was indebted in an amount of Rs.14 crores to financial institutions with whom a settlement was arrived at by her on 24th March 2004 and 13th July 2005. The Third Respondent has claimed to have invested an amount of Rs.7 crores in the project and it has been submitted that any injunctive order at this stage will completely

impede the Slum Rehabilitation Scheme.

2. The substantive relief that has been sought in these proceedings is to the following effect :

> "(a) that Your Lordships be pleased to issue a writ of certiorari or a writ in the nature of Certiorari or any other appropriate writ, order or direction calling for the Development Agreement dated 27-12-2000 executed between the Pune Municipal Corporation, Mr. Vivek Bhalchandra Joshi, Proprietor of M/s. Griha Nirman Company and Mahatma Phule Co-operative Housing Society in respect of development of the plot of land bearing Survey No.723 (P), Final Plot No.1004 (part), Parvati, T.P. Scheme No.1 of Rajendra Nagar, Pune and the Supplementary Agreement executed between The Pune Municipal Corporation and the Respondent No.3 Smt. Dhirottama Vivek Joshi and after examining the legality, propriety and validity of the action of the Pune Municipal Corporation in recognizing the Respondent

No.3 as the only heir of Late Shri Vivek Bhalchandra Joshi, Proprietor of M/s. Griha Nirman Company to the exclusion of the Petitioner, quash and set aside the orders of the Pune Municipal Corporation which are not made known to the Petitioner to recognize the Respondent No. 3 as th sole heir of the deceased Shri Vivek Bhalchandra Joshi and to enter her name in the Development Agreement dated 27.12.2000;

-(b) that Your Lordships be pleased to issue an appropriate writ, order or direction of this Hon'ble Court ordering, directing the Respondent No.1 the Pune Municipal Corporation to recognize both the Petitioner and the Respondent No.3 as the heirs of the Late Shri Vivek Bhalchandra Joshi, Proprietor of M/s, Griha Nirman Company and ordering, directing the Pune Municipal Corporation to enter the names of the Petitioner and Respondent No.2 in the Development Agreement dated 27.12.2000 and the Supplementary

Agreement dated 8.1.2003 with a direction to both the Petitioner and the Respondent No.3 to share the liabilities of Late Shri Vivek Bhalchandra Joshi, proprietor of M/s. Griha Nirman Company and under Development Agreement dated 27-12-2000 and also directing them both to carry out the construction work and complete it as per the Development Agreement dated 27.12.2000."

3. On 16th September 2005, a Division Bench of this Court disposed of the petition recording that the Petitioner had died and the petition stood abated. The order of the Court was carried in appeal to the Supreme Court. On 9th December 2005, the Supreme Court disposed of the appeal in the following terms:

"Leave granted.

We set aside the impugned order of the High Court and remit the matter to the High Court. It needs no emphasis that the High Court shall permit the parties to place their respective cases before it and thereafter the High Court shall decide as to whether the writ petition is to be

continued and/or is maintainable.

The appeal is disposed of accordingly."

4. On behalf of the Respondents, and particularly on behalf of the Third Respondent, the maintainability of the petition has been questioned on the ground that the petition raises disputed questions of fact, that cannot be investigated into in the exercise of the writ jurisdiction. Moreover, it has been submitted that two suits have been instituted on behalf of the Petitioner in the competent Civil Court at Pune, one for the grant of injunctive relief in which an injunction was refused by the Civil Court, Pune on 28th October 2004. Though that order has been carried in appeal before the District Court, no relief has been granted in that appeal. Moreover, it has been submitted that a suit for administration of the estate of the deceased also has been filed on behalf of the Petitioner which is pending. These facts have not been disputed.

5. In our view, having due regard to the facts which have been narrated above, the dispute which arises between the parties

cannot be adjudicated in the exercise of the jurisdiction under Article 226 of the Constitution and the Petitioner and upon her death, the legal heirs who have been brought on record, would have to be relegated to such remedies as are available in law. A bare perusal of the reliefs which have been extracted in the earlier part of this order, would demonstrate that the Petitioner seeks to question the action of the Municipal Corporation in recognising the Third Respondent as the heir of the deceased and entering her name instead and in place of her husband in the original agreement for development. A direction has been sought to the Pune Municipal Corporation to enter the name of both the Petitioner and the Third Respondent in the development agreement and the supplementary agreement with a further direction to both the Petitioner and the Third Respondent to share the liability of the deceased under the development agreement. No such relief can, in any event, be granted in writ proceedings. There are matters which are in serious dispute between the Petitioner and the Third Respondent. According to the Third Respondent, under the Slum Rehabilitation Scheme, it is the society of slum

dwellers that has to consent to the appointment of the developer and it is upon the grant of such consent by the society in the present case that the Municipal Corporation recognised the Third Respondent as a developer. The Third Respondent has also stated that a considerable part of the Slum Rehabilitation Scheme has already been implemented. Besides this, it is an admitted position that the Petitioner has taken recourse to the remedies available in law by instituting a civil suit for injunctive relief before the competent Civil Court at Pune in which interim relief was not granted. A suit for administration of the estate of the deceased is also stated to be pending. In that view of the matter, we are of the view that it would not be appropriate for this Court to exercise its writ jurisdiction under Article 226 of the Constitution and we relegate the legal heirs of the Petitioner to pursue such remedies as are available in law. The Petition shall accordingly stand dismissed.

CHIEF JUSTICE

Dr.D. Y. Chandrachud, J.